

5 FAM 470

ACCESSING AND USING DEPARTMENT OF STATE INFORMATION

*(CT:IM-136; 10-12-2012)
(Office of Origin: A/GIS/IPS)*

5 FAM 471 PURPOSE

(CT:IM-124; 12-09-2011)

This subchapter presents the policy requirements for accessing and using Department information that is generated both internally and externally. This subchapter also defines various types of accessible information used by other Federal agencies, internal auditors, congressional requestors and staffs, and the public.

5 FAM 472 SCOPE

(CT:IM-124; 12-09-2011)

- a. Federal agency workforce personnel must adhere to the requirements in this subchapter for accessing and using Department information. Workforce personnel include: all Federal employees both domestic and abroad at each Federal agency; contractors; and locally employed staff abroad.
- b. State and local governments must also adhere to the requirements in this subchapter.
- c. Internal and external auditors must follow the access, use, and restrictions described in this subchapter.
- d. Access by the public to Department information is governed by several Federal statutes and regulations, including those cited in 5 FAM 473, below. The Office of Information Programs and Services (A/GIS/IPS) processes all public requests, to the Department, for access to Department information.

5 FAM 473 AUTHORITIES

(CT:IM-124; 12-09-2011)

- a. The Freedom of Information Act (5 U.S.C. 552) requires Federal agencies to make public and accessible all bureaucratic and technical procedures for applying for documents from that agency.

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U.S. Department of State Foreign Affairs Manual Volume 8
FAM/FAH Template

- b. The Privacy Act of 1974 (5 U.S.C. 552a) states that no agency shall disclose any record by any means of communication to any person or agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.
- c. The Ethics in Government Act, 5 U.S.C. Appendix, states which persons may request access to the public financial disclosure reports of employees of the Department as well as limits to such requests and use of such information. 5 CFR part 2634, requires that high-level Federal officials disclose publicly their personal financial interests.
- d. 22 U.S.C. 4004 states that only select personnel can inspect performance records of the Department relating to Foreign Service employees, including performance material.
- e. 22 CFR Part 171 contains the Department's regulations implementing the Freedom of Information Act, the Privacy Act, and the public financial disclosure provisions of the Ethics in Government Act.
- f. 22 CFR Part 172 deals with the service of subpoenas, court orders, and other demands or requests for official information or action.
- g. Executive Order 13526 (Classified National Security Information) establishes a uniform system for classifying, marking, safeguarding, and declassifying all information concerning the national defense or foreign relations of the United States when such information is determined to require protection against unauthorized disclosure. It also provides for mandatory declassification review of identifiable documents on request.
- h. The Immigration and Nationality Act 8 U.S.C. 1101 at §1202(f) provides for the confidentiality of visa records, with use authorized only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that the Secretary of State may authorize the providing of a record to a court or a foreign government under certain circumstances.

5 FAM 474 GENERAL PERSONNEL POLICIES

(CT:IM-124; 12-09-2011)

The sections below describe what certain personnel must do to access and use Department information.

5 FAM 474.1 Department Workforce Personnel

(CT:IM-136; 10-12-2012)

- a. Employees of the Department, its domestic field offices, posts abroad, and U.S. missions to international organizations may access records based on the following general restrictions:

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FAM/FAH Template

- (1) Access is in accordance with applicable procedures and requirements of the security regulations (12 FAM 230 and 12 FAM 576), the personnel regulations (3 FAM 2350), the regulations regarding Inspector General files (2 FAM), and the provisions of the Privacy Act of 1974 (See 5 FAM 462 and 22 CFR Part 171).
- (2) Access to and use of records by employees is subject to the determination of a need-to-know by offices responsible for the information. An employee is not entitled to receive information only by virtue of official position or by holding a security clearance. The employee must have a need for access to particular records sought in connection with performance of official U.S. Government duties.
- (3) Foreign Nationals' access to Department information is limited to access required to perform official duties, consistent with provisions of the security regulations (See 12 FAM 500).
- (4) 22 U.S.C. 4004 states that performance records of the Department relating to Foreign Service employees, including performance material, are personal and private in nature and subject to inspection by the following personnel only:
 - (a) The President;
 - (b) Legislative and appropriations committees of Congress charged with considering legislation and appropriations for the Department or representatives authorized by the committees;
 - (c) Personnel identified in 3 FAM 2351.
- (5) Records relating to the following generally are only accessible by authorized employees for official purposes:
 - (a) Citizenship;
 - (b) Unsettled claims;
 - (c) Department and Foreign Service personnel matters;
 - (d) Issuance or refusal of visas or permits to enter the United States; and
 - (e) Intelligence and investigative records.If, however, such records are not exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), or other law, their disclosure availability is in accordance with Department regulations. National Archive regulations govern accessing retired records (See 22 CFR Part 171).
- (6) Classified, investigative and other sensitive records, originating in other agencies and furnished to the Department, are communicated to a third agency or person only under security regulations and with the consent of the originating agency (See Executive Order 13526 and 22 CFR Part 171).

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U.S. Department of State Foreign Affairs Manual Volume 8
FAM/FAH Template

- (7) Employee access to records for purposes other than in connection with performance of official U.S. Government duties is governed by procedures and requirements of public access regulations (See 22 CFR Part 171).
- b. To recall your Departmental or post records retired to Federal Records Centers or the Department records center storage facility, contact the Records Service Center (RSC; A/GIS/IPS/RA/RSC). Forward email requests for records to RetiredRecords-DL@state.gov.

5 FAM 474.2 Other Federal Workforce Personnel

(CT:IM-124; 12-09-2011)

- a. The Executive Secretariat (S/ES) is responsible for official communication and conveyance of information from the Department to the White House and other U.S. Government departments and agencies (See 1 FAM 022.2). When appropriate, provide documents requested by such agencies or departments to S/ES under cover of a memo for transmittal from the Executive Secretary to his or her counterpart in the requesting agency or department.
- b. Refer any requests for Office of Inspector General (OIG) records to the Office of Inspector General.
- c. Records maintained in offices and posts are available to other Federal agencies, only:
- (1) When deemed advisable by officers responsible for their custody;
 - (2) When not prohibited by privacy, security, or other statutory restrictions; and
 - (3) When accompanied with appropriate disclosure limitations.
- d. Each post establishes procedures for handling requests from the personnel of other U.S. Government agencies for access to post records for official purposes.
- e. Inactive records, retired by offices or posts, are available to other Federal agencies upon clearance from the office of origin or action. The release of the records is subject to the regulations and controls contained in 5 FAM 4 H-410.
- f. Coordinate with the Historical Office (PA/HO) all requests from other Federal agencies for records needed for historical research.
- g. Forward FOIA referrals from other agencies to:

Information Programs and Services
A/GIS/IPS
U.S. Department of State, SA-2
515 22nd Street, N.W.
Washington, DC 20522-8100

5 FAM 474.3 Requests From the Government

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U.S. Department of State Foreign Affairs Manual Volume 8
FAM/FAH Template

Accountability Office (GAO)

(CT:IM-124; 12-09-2011)

- a. It is the Department's policy to expeditiously fully cooperate with and assist the GAO in fulfilling its statutory responsibilities while also respecting Department foreign policy and operational requirements. As appropriate, the Department, within the framework of law and overall Administration policy, also may assist GAO in connection with studies falling outside its statutory jurisdiction, although there may be limitations on the form of assistance in such cases. The Department cooperates with the GAO by providing data and information, briefings, comments on draft reports, recommendations, and formal responses to final reports. The Department also assists the GAO with travel and other arrangements when GAO personnel travel to U.S. missions at the United Nations in New York and abroad.
- b. The procedures for working with the GAO are in 5 FAH-4 H-700.

5 FAM 474.4 Historical Researchers And Certain Former Government Personnel

(CT:IM-124; 12-09-2011)

The need to know requirement for access to classified information may, under certain circumstances and in accordance with E.O. 13526, be waived for historical researchers, former Presidents, former Vice Presidents, and individuals who have occupied senior policy-making positions to which they were appointed by the President or the Vice President (or their appointees or designees). See 22 CFR 9. Make requests to A/GIS/IPS for documents. A/GIS/IPS will determine, with the assistance of Diplomatic Security (DS), whether the former appointee has the needed security clearance.

5 FAM 474.5 Contractors

(CT:IM-124; 12-09-2011)

- a. All data created by contractors for the Department are official records and must be managed in accordance with records management legislation as codified in 44 U.S.C., chapters 21, 29, 31, and 33; the Freedom of Information Act (5 U.S.C. 552); and the Privacy Act (5 U.S.C. 552a). Schedule these records for disposition in accordance with 36 CFR Part 1228.
- b. The contracting officer (CO) from the appropriate liaison or functional office ensures that the contractor is informed of the requirements for access to Department records.
- c. Contractors' access to classified records is subject to security regulations (See 12 FAM 230 and 12 FAM 576).

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 8
FAM/FAH Template

5 FAM 474.6 Litigation Related Requests for Official Information or Testimony

(CT:IM-124; 12-09-2011)

- a. Handle all requests for official information or testimony involving litigation under 22 CFR Part 172.
- b. You must inform the Office of the Legal Adviser (L) of requests for records or information connected with litigation. Passport agencies must contact Passport Services Office of Legal Affairs (PPT/L) regarding any such requests. Passport records and information may not be disclosed except as provided in 7 FAM 1300 Appendix J. Do not disclose official records requested from outside the Department for use in litigation without the concurrence of (L). Maintain these records separately to avoid inadvertent disposal and label them with Form DS-1851, Hold For Litigation.

5 FAM 475 ACCESS TO THE PUBLIC

5 FAM 475.1 General Policy

(CT:IM-124; 12-09-2011)

- a. Unclassified information, documents, and forms that have previously been provided to the public by the Department will continue to be made available.
- b. Make all identifiable records of the Department not available under 5 FAM 475.1 paragraph a (above) available to the public, pursuant to the provisions of the Freedom of Information Act, E.O. 13526, the Privacy Act, and the Ethics in Government Act, upon compliance with the policies and procedures established in 22 CFR Part 171, Availability of Information.
- c. Forward mail requests to:

Information Programs and Services
A/GIS/IPS
U.S. Department of State, SA-2
515 22nd Street, N.W.
Washington, DC 20522-8100

The phone number of the FOIA Requester Service Center is: 202-261-8484.

Facsimile requests under the FOIA are sent to: 202-261-8579. The Department's public website has a FOIA letter generator that the public can use to submit a request by email. IPS will coordinate the response to the request with Department field offices and posts abroad, if necessary.

- d. Refer any request received through normal channels of contact with the public, media, or the Congress to Information Programs and Services, A/GIS/IPS, for processing under the appropriate statute or executive order and notify the

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U.S. Department of State Foreign Affairs Manual Volume 8

FAM/FAH Template

requester that the request has been referred.

5 FAM 475.2 Access to Archived Records

(CT:IM-124; 12-09-2011)

The Department ordinarily transfers custody of records as soon as practicable after they become 25 years old to the National Archives. Forward correspondence regarding access to these records to:

Textual Archives Services Division
National Archives and Record Administration
College Park, MD 20740

5 FAM 476 THROUGH 479 UNASSIGNED

(CT:IM-124; 12-09-2011)